

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

JESSICA RAE PLEASANT

Plaintiff,

v.

**ARTS AND HUMANITIES COUNCIL
OF TULSA, INC. d/b/a AHHA TULSA,**

Defendant.

Case No. 23-CV-037-MTS

OPINION AND ORDER

On May 31, 2023, the Court entered a minute order [Docket No. 44] setting Defendant's Motion to Compel [Docket No. 43] for a motion hearing on June 20, 2023. It also advised the parties of the Court's intention to conduct a pretrial discovery hearing pursuant to Fed. R. Civ. P. 16 during the June 20, 2023, hearing:

MINUTE ORDER by Magistrate Judge Mark T. Steele[:] Pursuant to LCvR37-2(e), Plaintiff shall respond to Defendant's Motion to Compel Plaintiff's Discovery Responses (Docket No. 43) no later than June 14, 2023. No reply shall be permitted. Hearing set for June 20, 2023, at 9:30 a.m. at 333 W. 4th Street, Tulsa, OK 74103, Fourth Floor, Courtroom #5. The parties are advised that the Court also intends to conduct a Rule 16 pretrial discovery hearing and expects the parties to be prepared to discuss a discovery and case management plan for the case. Failure to attend this in-person hearing may result in the imposition of sanctions.

Defendant's counsel was present for the June 20, 2023, hearing, but Plaintiff, who is proceeding *pro se*, failed to appear or notify the Court of her inability to appear. The Court's May 31, 2023, minute order provided Plaintiff with notice that her failure to attend could result in sanctions.¹

¹ This is not Plaintiff's first time to ignore this Court's order to appear for an in-person hearing. Plaintiff also failed to appear or notify the Court of her inability to appear for a May 23, 2023, hearing associated with Defendant's Motion to Compel Plaintiff's Initial Disclosures [Docket No. 32]. Her failure to do so resulted in the imposition of sanctions. See Docket Nos. 40 and 41.

Under Rule 16, the Court is authorized “[on] motion *or on its own*” to “issue any just orders, . . . if a party or its attorney . . . fails to appear at a scheduling or other pretrial conference[.]” Fed. R. Civ. P. 16(f)(1)(A) (emphasis added). Moreover, regarding the imposition of fees and costs, Rule 16 states that “the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 16(f)(2).

Because Plaintiff failed to attend the hearing, this Court has authority under Rule 16 to impose sanctions on Plaintiff. In fact, the Court must award Defendant the reasonable expenses associated with the preparation and attendance of Defendant’s counsel at the hearing unless the exceptions to Rule 16(f)(2) preclude the award. The Court finds they do not.

The first exception applies if Plaintiff’s “noncompliance was substantially justified.” The Court entered a minute order advising the parties of the date and time of the hearing on May 31, 2023. Plaintiff failed to respond to Defendant’s motion by the June 14, 2023, deadline, and she failed to notify the Court prior to the hearing that she did not plan to attend. If Plaintiff had a conflict with the hearing setting, she could have sought a continuance or requested to appear by other means. The Court finds the first exception does not apply.

The second exception applies if: “other circumstances make an award of expenses unjust.” This exception affords the Court broad discretion in denying an award of reasonable costs. In examining the record, the Court finds that there is no circumstance that would make an award of reasonable expenses unjust. The Court finds the second exception does not apply.

As none of the statutory exceptions apply, the Court is required to award reasonable expenses, including attorney fees, to Defendant under Rule 16. The Court hereby orders Defendant

to file its Application for Fees and Costs related to its preparation for the motion hearing and attendance at the hearing no later than June 30, 2023. Pursuant to LCvR7-1(e), Plaintiff will have twenty-one days from the date Defendant's application is filed to respond to the reasonableness of the fees and costs requested by Defendant.

IT IS SO ORDERED this 21st day of June, 2023.

A handwritten signature in black ink, appearing to read 'Mark T. Steele', written over a horizontal line.

MARK T. STEELE, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT